IN THE HIGH COURT OF DELHI

MAC.APP.No.72/2006

Bharat Bhushan ..... Appellant
! through: Mr. Hem C.Vashisht, Advocate
Mr. Bhowmik Nayyar, Advocate

VERSUS

$ Jaspal Singh ..... Respondents
^ through: Ms. Neelam Gupta, Advocate for R-1
Ms. Iram Majid for Ms. Zubeida Begum, Advocate for GNCT of Delhi.

RESERVED ON: 12.07.2007

% DATE OF DECISION: 18.07.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. The instant appeal is an illustration of what is being currently reported in the press. The menace on the public roads in Delhi by private buses.

2. Not a day passes when a person or two and sometimes up to five are not run over each day by private buses.

3. When a public interest litigation was filed in this court and was listed before the Division Bench IV on 9.7.2007, the very next day action was taken by the police and the State Transport Authorities. A public scandal was revealed. 9 out of 10 buses on the roads of Delhi were not only without a valid licence or a permit, even 60% were being plied by parties who were not the registered owners of the buses. 60% of the buses were found without the mandatory third party risk insurance cover.

4. Pen profile of the facts of the present case are that on 11.12.1989, Jaspal, a young boy aged 11 years was in the process of alighting from bus No. DEP 515 when suddenly the driver accelerated the bus. Jaspal fell down and the rear left wheel of the bus ran over his lower limbs. Ex.PW-3/1, the discharge summary from the hospital reveals that the young boy remained hospitalized from 11.12.1989 till 5.1.1990.

5. On 17.12.1990 he had to be re-hospitalized for further operation and was discharged on 25.12.1990. Permanent damage was caused to the left femur and the left tibia. He had to under go physiotherapy till the year 1993. He suffered 70% permanent disability of the lower limb. Total compensation awarded to the young boy is Rs.70,000/- for pain

and suffering. Rs.25,000/- towards medical expenses including physiotherapy and conveyance charges. Rs.1 lac for permanent disability. The total sum awarded is Rs.1,95,000/-.

6. Appellant, Bharat Bhushan was stated to be the owner of the bus. Rambir was the driver of the bus.

7. In the claim petition filed by Jaspal through his father, Rambir was impleaded as respondent no.1. Appellant was impleaded as respondent no.2. Both respondents in the claim petition being served and absenting themselves when claim petition was listed were proceeded against ex-parte. After recording ex-parte evidence, learned Tribunal, noting the injuries and the permanent disability of the injured passed and awarded as aforenoted.

8. The award was pronounced on 21.1.2003.

9. Appellant nor the driver supplied any insurance particulars to the police which had seized the bus after the accident. The injured had no information about the insurance particulars. Hence, no insurance company was impleaded as a respondent in the claim petition.

10. When award was sought to be executed against the appellant he filed an application under Order 9 Rule 13 stated as under:-

"**Respectively Showeth :-**

1. That the above titled executed petition seeking execution of decree dated 21.1.2003 passed by Hon'ble Ms. R.Kiran Nath the then Judge MACT. The said decree was passed upon the claim filed by the decree holder.

2. The present applicant was never served with any summons at any point of time nor he ever participated in the said claim proceedings. Neither he knew about the claim proceedings at any point of time. The applicant has come to know about the passing of the impugned decree recently only on 23.11.2005, when in absence of applicant the court notice server came at the house of the applicant. Applicant came back only on 30.11.2005. Immediately thereafter the applicant engaged a lawyer who after inspection of the court file only on 7.12.2005 came to know about the passing of the impugned decree against the applicant and one Rambir.

3. That the applicant have very good prima facie case in his favour and there is every likelihood of succeeding in the case and further now the applicant has came to know that the calim is an out come of past animosity and the applicant has nothing to do with the alleged incident neither he is the owner nor in possession of the vehicle in question at any point of time. Hence in case the applicant will not be allowed to participate in the proceedings and further the decree is not set aside the applicant will suffer irreparable loss and injury which will not be compensated in any manner.

Prayer:-

It is therefore accordingly prayed that this Hon'ble Court be pleased to set aside the ex-parte decree dated 21.1.2003 and allow the applicant to defend the claim in the interest of justice."

11. Vide order dated 28.1.2006 the application under

Order 9 Rule 13 was dismissed.

12. The appeal accordingly lays a challenge to not only the ex-parte award dated 21.1.2003 but even the order dated 28.1.2006.

13. Since the appeal is on law and facts and as I am required to re-evaluate the evidence, I am, at the moment, not noting reasons recorded by the learned Judge MACT while dismissing application filed by the appellant under Order 9 Rule 13 CPC.

14. At the hearing held on 12.7.2007, while reserving for judgment, following order was passed:-

> "Present: Mr.Hem C. Vashisht for appellant.
> Ms.Neelam Gupta for R-1.
> Ms.Iram Majid for Ms.Zubeida Begum for GNCT of Delhi.
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> MAC. APP. No.72/2006
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> 1. It is inter alia urged that the appellant was not served with the summons in the claim petition and was wrongly proceeded against ex-parte. That order dismissing the application filed under Order 9 Rule 13 CPC is contrary to law. That the appellant was not the owner of the offending vehicle. That there is no legal evidence to sustain the finding that the appellant was the owner of the offending vehicle. That the supurdaginama was not proved in accordance with law.
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> 2. However, I may note that learned counsel for the appellant does not dispute

that the appellant got the offending vehicle released on superdari after executing the requisite bond before the police authorities.

3. Arguments heard. Reserved for judgment."

15. As noted in the order dated 12.7.2007, 5 contentions were urged. The first two contentions, namely whether learned Trial Judge was justified in proceeding ex-parte against the appellant and whether order dated 28.1.2006 is legal and valid need to be decided together inasmuch as they emerge from the same set of facts.

16. Trial Court record shows that the claim petition was listed for the first time on 10.7.1990. Notice was issued to both respondents i.e. appellant and the driver of the bus returnable for 13.11.1990. Service had to be effected by ordinary process as also by Regd. A.D.Post.

17. A.D.Card at page 115 of the record of the Trial Court reveals that the registered envelope containing the court notice was duly received by the addressee at J-87, Kalka Ji, New Delhi, the admitted residence of the appellant. Likewise, the A.D.Card at page 117 evidenced that Rambir, the driver of the bus received the registered envelope containing the summons at his address i.e. 154, Tilak Khandi Giri Nagar, Kalka Ji, New Delhi.

18. Notice taken by the process server, available at page 123 of the Trial Court record, bears the signatures of Bharat Bhushan i.e. the appellant evidencing receipt of the notice by appellant on 28.7.1990.

19. Likewise, pertaining to the driver Rambir, process server served him at his residence on 28.7.1990. The copy of the notice acknowledging receipt by Rambir is at page 121 of the record of the Trial Court.

20. Order dated 13.11.1990 records personal presence of respondent no.1. It records memo of appearance filed on behalf of respondent no.2 and respondent no.3. The memo of appearance has been filed by one Suman Bagga, Advocate and is at page 109 of the record of the learned Trial Court.

21. Unfortunately, the learned Judge MACT did not realize that there was no respondent no.3 in the claim petition. No insurance company was impleaded as a respondent.

22. Be that as it may, order dated 13.11.1990 records that time was granted to the respondents for filing a written statement.

23. Rambir engaged one D.K.Ahuja as his counsel who filed a Vakalatnama which is at page 113 of the record of the learned Trial Judge.

24. No written statement was filed. For unexplainable reasons matter was repeatedly adjourned. On 24.5.1993, learned Judge MACT, probably realizing that something was amiss, directed fresh service of the notice of the claim petition upon the appellant i.e. respondent no.2 returnable for 7.10.1993.

25. Notice issued for 7.10.1993 was not received back. Fresh notice was issued returnable for 10.3.1994. Even that was not received back. Fresh notice was issued returnable for 12.10.1994. Even that was not received back. Fresh notice was issued returnable for 24.3.1995. Even that was not received back. Fresh notice was issued returnable for 2.8.1995. Fortunately, for said date, appellant i.e. respondent no.2 was served by Regd. A.D.Post evidenced by the A.D.Card at page 133 of the record of the learned Trial Judge. The A.D.Card shows that the registered envelope was duly delivered at J-87, Kalka Ji, New Delhi.

26. Since none appeared for the appellant, vide order dated 2.8.1995, recording service, matter was renotified for 4.1.1996 on which date there being no appearance on behalf of the appellant, he was proceeded against ex-parte.

27. Prima facie, no fault or any illegality can be alleged

against the order dated 4.1.1996 proceeding ex-parte against the appellant.

28. I have noted hereinabove in para 10 the averments made by the appellant in the application under Order 9 Rule 13 filed by him.

29. Not a word has been spoken about or with respect to the two A.D.Cards evidencing that the appellant was served firstly for 13.11.1990 and for the second time for the date 2.8.1995.

30. I concur with the view taken by the learned Tribunal that the appellant not having explained or even offered an explanation with respect to the two A.D.Cards, no case was made out to recall the ex-parte decree for the reason appellant failed to disclose a sufficient cause for non appearance when the claim petition was listed after appellant was served.

31. I may additionally note that the appellant has not stated even a word about the service recorded by the process server on the appellant on 28.7.1990. In this connection, I may further note that a visual comparison of the signatures of he appellant, which are his admitted signatures in the appeal, corresponding with the signatures on the office copy of the notice at page 123 of the record of the learned Trial Judge.

32. Thus, the first two contentions urged by the appellant are rejected.

33. The 3rd, 4th and 5th contention urged by learned counsel for the appellant and as noted in para 1 of my order dated 12.7.2007 could be disposed of together inasmuch as they require appreciation of the same set of facts.

34. But, at the outset, I may note that as recorded in para 2 of my order dated 12.7.2007, counsel for the appellant accepted that the appellant had got released on superdari the offending bus after executing the requisite bond before the police authorities.

35. Case sought to be urged before me was that the offending bus was actually owned by Mr. V.P.Mehta and that the permit for operating the bus was in the name of V.P.Mehta.

36. Record of the learned Tribunal shows that at page 85 of the record, photocopy of the superdarinama obtained from the police was filed.

37. The same records that the appellant, stating himself to be the owner of the bus, got the same released with an undertaking that he would produce the bus as and when required.

38. Learned counsel for the appellant did not dispute

that the appellant moved an application with the local police stated therein that he was the owner of the bus and that the same may be released to him on superdari.

39. Contention of learned counsel for the appellant that the appellant should be permitted to prove that not he but V.P.Mehta was the owner of the bus has to be repelled for the reason estopple comes in the way of the appellant.

40. Having represented to the police that he was the owner of the bus and having got the same released on superdari, appellant cannot be permitted to urge to the contrary.

41. Learned counsel for the appellant made a feeble attempt to urge that by bribing the police, it is possible to manage everything in Delhi. Counsel sought to urge that the appellant may have acted improperly when he got the bus released on superdari but that does not dis-entitle the appellant to prove the truth.

42. If appellant bribed the police and managed to take delivery of the bus on superdari, he did by not only representing that he owned the bus but by even bribing public officers. His conduct does not entitle him to get rid of the consequences of the taint.

43. It is settled law that a trial before a claims tribunal constituted under the MV Act 1988 is not akin to a civil suit. In fact, the Tribunal has to hold an inquiry to determine the issues raised on the pleadings of the parties.

44. Standard of proof at a trial before the Tribunal is much lower than the standard of proof envisaged even at a civil trial.

45. Photocopy of the certified copy of the superdarinama filed by the claimant before the Tribunal is good and sufficient evidence.

46. I need not expand on the issue for the reason, appellant admitted before me that he had moved an application before the police authorities stating therein that he was the owner of the bus and had got the same released on superdari.

47. Injured or claimants of deceased persons have no means to find out as to who is the owner of the offending motor vehicle other than the police authorities. Thus, where a person informs the police that he is the owner of the vehicle, he invites a claim against him by the injured or the claimants of the deceased. The consequences of the misrepresentation made by this person cannot be avoided by the person concerned.

48. Thus, looked at from any angle, appellant is the creator of the situation and cannot shy away from the consequences thereof.

49. I was inclined to otherwise dismiss the petition on a short count namely non compliance of Section 173 of the MV Act 1988.

50. The said provision enjoins upon the challenger of an award to deposit Rs.25,000/- when appeal is filed against the award. Appellant tendered, in the name of the Registrar of this court, a cheque in sum of Rs.25,000/- dated 7.2.2006. The same was returned by the State Bank of Patiala i.e. banker on which the cheque was issued with the remarks 'insufficient funds'.

51. The appellant has not bothered to replace the cheque with a cash deposit. No application has been filed seeking extension of time or permission to do the needful.

52. I find no merits in the appeal.

53. The appeal is dismissed with cost of Rs.10,000/-.

54. LCR be returned.

July 18, 2007
mm

PRADEEP NANDRAJOG
(JUDGE)